

Before the
Federal Communications Commission
Washington, DC

RECEIVED

NOV 5 2001

In the Matter of)
)
 Amendment of Section 202(b),)
 Table of Allotments,)
 FM Broadcast Stations)
 (Barnwell, South Carolina and Pembroke,)
 Douglas and Willacoochee, Georgia;)
 Statesboro, Pulaski, East Dublin,)
 Swainsboro, Twin City, Georgia))
)
 To: **Chief, Allocations Branch**)

MM Docket No. 00-18
 RM-9790

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

PETITION FOR RECONSIDERATION

Multi-Service Corp., by its attorney, hereby seeks reconsideration of the *Report and Order*, DA 01-2316 (rel. Oct. 5, 2001), substituting Channel 257C1 for Channel 256C3 at Barnwell, South Carolina, and reallocating Channel 257C1 to Pembroke, Georgia. With respect thereto, the following is stated:

Background

The proposed reallocation of Channel 257C1 from Barnwell to Pembroke was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community Order"). In order to accomplish the upgrade of channel and change of community, Bullie Broadcasting proposed the reallocation of Channel 258C1 from

No. of Copies rec'd 0+4
 LBIABODE

Douglas, Georgia to Willacoochie, Georgia, and the modification of Station WDMG license to specify Willacoochie as the new community of license. Multi-Service, licensee of Station WPMX, Channel 275C3, Statesboro, Georgia filed a Counterproposal, seeking the substitution of Channel 257C3 for Channel 275C3 at Statesboro, the same reallocation of WDMG from Douglas to Willacoochie, as well as the allocation of Channel 275A to Pulaski, Georgia and the allocation of Channel 276C3 in lieu of Channel 251C3 to East Dublin, Georgia.

The Commission granted Bullie's proposal, claiming that this result will result in a preferential arrangement of allocations with a first local service while Barnwell will continue to receive local service from AM station WBUB. It further dismissed Multi-Service's Counterproposal, finding that Multi-Service had not agreed to reimburse Jumbo Thing for the costs of changing its community of license to Willacoochie, and its proposal conflicted with proposals contained in MM Docket No. 99-259.

Argument

The Commission's *Report and Order* must be reconsidered as contrary to the Commission's rules and policies. In this case, this Commission found that removal of Channel 256C3 from Barnwell will not remove its sole local service insofar as "Barnwell will continue to receive local service from AM station WBUB." *Report and Order* at ¶ 3. As seen in Attachment 1, that determination was in error. On April 12, 2001, the WBUB(AM) license was cancelled. Therefore, the Commission's action in this proceeding will, in fact, result in the removal of Barnwell's sole local aural service.

That, under Commission precedent and the facts of this case, is not permitted. In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094 (1990), the Commission addressed the

removal of a sole local service from a community as “presumptively” disserving the public interest. As the Commission has stated, “in general, we do not believe that the public interest would be served by removing a community’s sole local transmission service merely to provide a first local transmission service to another community.” See Ardmore, Oklahoma, and Sherman, Texas, 6 FCC Rcd 7006, ¶ 7 (1991). The underpinning for this policy is that the public has a legitimate expectation that existing local service will continue. In this connection, the Commission stated that a vacant allotment or unbuilt construction permit does not adequately cure a disruption of this service. See Change of Community Order, 5 FCC Rcd at 7097, ¶ 19 (1990) (vacant allotments or unconstructed construction permits are not considered to be existing services for change of community proceedings under Section 1.420(i) of the Commission’s Rules).¹

Moreover, no other public interest considerations exist for waiver of the Commission’s policy. The Commission indicated in the Change of Community Order that under some very limited circumstances it would consider that the removal of a sole local service may be justified if there are compelling public interest factors to offset the expectation of continued service.

However, in *Tuscola and Clio, MI*, 15 FCC Rcd 8958 (2000), the Commission stated:

we do not find that situation is applicable here where both the existing and proposed arrangement of allotments trigger the same allotment priority.

Since both the Barnwell and the Pembroke community allotments now, as it turns out, trigger “Priority (3)” in the Commission’s allotment priorities (first local service), the Commission’s

¹ Accord, *Sparta and Buckhead, GA*, 15 FCC Rcd 21536 (MMB 2000) (unbuilt construction permit); *Rugio and Taft, TX*, 14 FCC Rcd 11609 ¶ 3 (MMB 1999) (the Commission has defined “existing service” for change of community cases as “on air stations”); *Olney, Archer, Denison-Sherman and Azle, TX and Lawton, OK*, 13 FCC Rcd 18920, ¶ 4 (MMB 1998) (“we recognize that a removal of a sole local service...is not obviated by the allotment of a vacant channel”).

“public interest” consideration exception does not apply.

In any event, even if the exception applied, in considering a change of community, the Commission compares the existing and proposed allotment to determine whether the proposal would result in a “preferential arrangement of allotments.” *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989). The FCC evaluates FM petitions for a new community of license using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982).² In this case, the existing community of Barnwell has a population of 5035 persons, while the new proposed community of Pembroke has a population of only 2379 persons. Attachment 2. Thus, the existing community of Barnwell is favored under the Commission’s allotment criteria. *Calico Rock and Leslie, AR*, 12 FCC Rcd 20174, ¶ 3 (1997) (the determining factor in comparing competing proposals representing first local services is the size of the community).

Moreover, the mere fact that greater service will be rendered within WBAW’s “60 dBu contour” by virtue of the proposed channel and community change also is irrelevant. As the Commission observed in *Alva, Mooreland, Tichomingo, Tuttle, and Woodward, Oklahoma*, 16 FCC Rcd 1525 (MMB 2000):

We recognize that if Channel 259C3 is reallocated to Tuttle as requested, Station KTSH will be able to provide service to 759,413 people. However, the determining factor in comparing competing proposals for a first local aural service is the size of the community of license, not the potential population within the projected 60 dBu contour. See, *Sparta and Buckhead, GA*, DA 00-2481, released November 3, 2000, 65 FR 69725, November 20, 2000, and *Marks and Woodsville, FL*, 12 FCC Rcd 11957 (1997) and cases cited therein.... Therefore, based upon the above analysis, we find that [the proponent] has not presented a sufficiently compelling public interest benefit to warrant the removal of [a

² The FM allotment priorities are as follows: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to Priorities (2) and (3).

community's] sole local aural service and thus deprive the people of a service they have come to expect.

Id. at ¶ 17. See also, *Sparta and Buckhead, GA*, 15 FCC Rcd 21536 (MMB 2000):

We recognize that the allotment of Channel 274C3 could enable Station WPMA to provide reception service to a greater number of people than it presently can as a Class A station at Sparta. However, the determining factor in comparing competing proposals representing first local services is the size of the community and not the potential population within the projected 60 dBu contour. *See, Calico Rock and Leslie, Arkansas*, 12 FCC Rcd 20174 (1997).

Id. at ¶ 6.

Finally, the fact that the Commission has allotted Channel 256C3 to Barnwell as a “backfill” allotment does not allow Bullie’s proposal to go forward. As the Commission has stated:

We specifically wish to clarify that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered in favor of the proposal, does not adequately cure the disruption to existing service occasioned by removal of an operating station. From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set.

See Change of Community Order, 5 FCC Rcd at 7097. See also, *Klamath Falls, Altamont, and Butte Falls, OK*, 10 FCC Rcd 7583 ¶ 14 (MMB 1995).

The last date for filing comments in this proceeding was April 7, 2000. Section 1.429(b)(1) of the Commission’s rules permits the consideration relies of facts which have not previously been presented to the Commission if they relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission. 47 C.F.R. § 1.429(b)(1). Moreover, new facts may be relied on by the Commission where such reliance is mandated by the public interest. 47 C.F.R. §1.429(b)(3). In this case, the WBUB(AM) license was not cancelled until April 12, 2001, one year after the last date for filing

comments in this proceeding. Moreover, allowing the Commission decision to go forward will result in removal of the community of Barnwell's sole local aural service, in contravention of Commission policy. For this reason, as well, taking cognizance of the cancellation of the WBUB(AM) license is fully warranted. Accord, *Sparta and Buckhead, GA*, 16 FCC Rcd 2169, ¶ 4 (MMB 2001).

WHEREFORE, it is respectfully requested that this Petition for Reconsideration be granted, and the Commission's upgrade and reallocation of Channel 256C3, Barnwell, South Carolina to Pembroke, Georgia as Channel 257C, be reversed.

Respectfully submitted,

MULTI-SERVICE CORP.

By: 

Dan J. Alpert

Its Attorney

The Law Office of Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

November 5, 2001

ATTACHMENT 1

 **Federal Communications Commission**

[FCC Home Page](#) | [Search](#) | [Commissioners](#) | [Bureaus Offices](#) | [Finding Info](#)

[Help](#) | [Home](#)

Search returned: 1 matching station

Station Search Results

DWBUB	54880	AM	CITICASTERS LICENSES, INC.	LICENSE CANCELLED	Click for Details

**Federal Communications Commission**[FCC Home Page](#)[Search](#)[Commissioners](#)[Bureaus Offices](#)[Finding Info](#)[Help](#) | [Home](#)

Station Search Details

Call Sign:	DWBUB
Facility Id:	54880
Community of License:	BARNWELL, SC
Service:	AM
Fac Type:	UNKNOWN
Status:	LICENSE CANCELLED
Status Date:	04/12/2001
Frequency:	740
Channel:	
Lic Expir:	12/01/2003
Licensee:	CITICASTERS LICENSES, INC.
Address:	200 EAST BASSE ROAD
Address 2:	
City:	SAN ANTONIO
State:	TX
Zip Code:	78209
Call Sign History	View Call Sign History

**Federal Communications Commission**[FCC Home Page](#)[Search](#)[Commissioners](#)[Bureaus Offices](#)[Finding Info](#)[Help](#) | [Home](#)

Station Search Details

Call Sign:	DWBUB
Facility Id:	54880
Community of License:	BARNWELL, SC
Service:	AM
Fac Type:	UNKNOWN
Status:	LICENSE CANCELLED
Status Date:	04/12/2001
Frequency:	740
Channel:	
Lic Expir:	12/01/2003
Licensee:	CITICASTERS LICENSES, INC.
Address:	200 EAST BASSE ROAD
Address 2:	
City:	SAN ANTONIO
State:	TX
Zip Code:	78209
Call Sign History	View Call Sign History

ATTACHMENT 2



American Fact

Main | Search | Feedback | FAC



Quick Tables

Print / Download

Rela

DP-1. Profile of General Demographic Characteristics: 2000
 Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data
 Geographic Area: **Pembroke city, Georgia**

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see
<http://factfinder.census.gov/home/en/datanotes/expsf1u.htm>.

Subject	Number	Percent
Total population	2,379	100.0
SEX AND AGE		
Male	1,143	48.0
Female	1,236	52.0
Under 5 years	176	7.4
5 to 9 years	201	8.4
10 to 14 years	218	9.2
15 to 19 years	227	9.5
20 to 24 years	143	6.0
25 to 34 years	331	13.9
35 to 44 years	331	13.9
45 to 54 years	326	13.7
55 to 59 years	110	4.6
60 to 64 years	80	3.4
65 to 74 years	130	5.5
75 to 84 years	80	3.4
85 years and over	26	1.1
Median age (years)	31.8	(X)
18 years and over	1,638	68.9
Male	765	32.2
Female	873	36.7
21 years and over	1,525	64.1
62 years and over	282	11.9
65 years and over	236	9.9
Male	84	3.5
Female	152	6.4
RACE		
One race	2,351	98.8
White	1,417	59.6
Black or African American	905	38.0
American Indian and Alaska Native	3	0.1
Asian	10	0.4
Asian Indian	0	0.0
Chinese	0	0.0
Filipino	0	0.0
Japanese	5	0.2
Korean	4	0.2
Vietnamese	0	0.0
Other Asian ¹	1	0.0
Native Hawaiian and Other Pacific Islander	8	0.3
Native Hawaiian	0	0.0
Guamanian or Chamorro	8	0.3
Samoa	0	0.0
Other Pacific Islander ²	0	0.0



American Fact

Main | Search | Feedback | FAC



Quick Tables

Print / Download

Rela

DP-1. Profile of General Demographic Characteristics: 2000
 Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data
 Geographic Area: **Barnwell city, South Carolina**

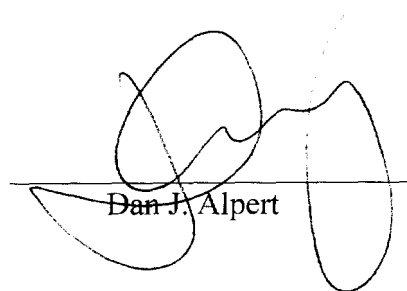
NOTE: For information on confidentiality protection, nonsampling error, and definitions, see
<http://factfinder.census.gov/home/en/datanotes/expsf1u.htm>.

Subject	Number	Percent
Total population	5,035	100.0
SEX AND AGE		
Male	2,340	46.5
Female	2,695	53.5
Under 5 years	407	8.1
5 to 9 years	364	7.2
10 to 14 years	431	8.6
15 to 19 years	363	7.2
20 to 24 years	316	6.3
25 to 34 years	671	13.3
35 to 44 years	720	14.3
45 to 54 years	617	12.3
55 to 59 years	239	4.7
60 to 64 years	164	3.3
65 to 74 years	386	7.7
75 to 84 years	278	5.5
85 years and over	79	1.6
Median age (years)	34.6	(X)
18 years and over	3,603	71.6
Male	1,598	31.7
Female	2,005	39.8
21 years and over	3,419	67.9
62 years and over	827	16.4
65 years and over	743	14.8
Male	282	5.6
Female	461	9.2
RACE		
One race	4,985	99.0
White	2,508	49.8
Black or African American	2,385	47.4
American Indian and Alaska Native	20	0.4
Asian	53	1.1
Asian Indian	13	0.3
Chinese	18	0.4
Filipino	3	0.1
Japanese	2	0.0
Korean	1	0.0
Vietnamese	8	0.2
Other Asian ¹	8	0.2
Native Hawaiian and Other Pacific Islander	2	0.0
Native Hawaiian	1	0.0
Guamanian or Chamorro	1	0.0
Samoa	0	0.0
Other Pacific Islander ²	0	0.0

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that the foregoing document has been sent to the following parties via First Class Mail, postage prepaid:

J. Geoffrey Bentley, P.C.
Bentley Law Office
P.O. Box 71207
Herndon, VA 20171



Dan J. Alpert